

Michael D. Senneff, Esq. (SB 039388)
Bonnie A. Freeman, Esq. (SB 180502)
SENNEFF FREEMAN & BLUESTONE, LLP
50 Old Courthouse Square, Suite 401
P.O. Box 3729
Santa Rosa, CA 95402-3729
Telephone: 707-526-4250
Facsimile: 707-526-0347

Attorneys for Defendants County of Sonoma (also sued as Sonoma County Sheriff's Department and Sonoma County District Attorney's Office), Stephan Passalacqua, J. Michael Mullins, Greg Jacobs, Christine M. Cook, Russel L. Davidson, James Patrick Casey, and Detective Beau M. Martin

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ZACHARIAH JUDSON RUTLEDGE,

NO. CV 07-04274 CW

Plaintiff,

COUNTY DEFENDANTS' NOTICE OF MOTION
AND MOTION TO DISMISS SECOND
AMENDED COMPLAINT
[FRCP Rule 12(b)(6)]

v.

COUNTY OF SONOMA, MICHAEL
POTTS, et al.,

Date: April 10, 2008
Time: 2:00 p.m.
Ctrm: 2

Defendants.

TO PLAINTIFF AND TO HIS ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE and notice is hereby given that on April 10, 2008, at 2:00 p.m. in the above entitled court, before the Hon. Claudia Wilken, defendants County of Sonoma (also sued as Sonoma County Sheriff's Department and Sonoma County District Attorney's Office), Stephan Passalacqua, J. Michael Mullins, Greg Jacobs, Christine M. Cook, Russel L. Davidson, James Patrick Casey, and Detective Beau M. Martin (collectively "County Defendants") will and hereby do move for dismissal of the Second Amended Complaint pursuant to Fed. Rules of Civ. Proc. Rule 12(b)(6). The motion is made on each of the following grounds:

1. The Second Cause of Action for violation of the California Constitution, Article I, as stated under Cal. Civil Code §§51 and 52 fails to state facts sufficient to constitute a cause

of action against the County defendants as a matter of law, as Civil Code §§51 and 52 (and the statutory remedies thereunder) do not provide for the relief sought.

2. The Third Cause of Action for intentional/negligent infliction of emotional distress, insofar as it seeks redress pursuant to Civil Code §§51 and 52, fails to state a cause of action as those statutes do not provide remedy for these common law tort claims.
3. The Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Twelfth, Thirteenth and Sixteenth Causes of Action (for various stated constitutional violations) fail to state facts sufficient to constitute separate causes of action against County defendants, as they are merely restatements of the First Cause of Action which adequately alleges violations of the constitutional rights provided under the First, Fourth, Fifth and Fourteenth Amendments.
4. The Tenth Cause of Action for defamation, slander and libel (defamation) fails to state facts sufficient to constitute a cause of action against defendant Christine Cook, as the plaintiff has failed to allege which, if any, of the statements alleged to have been made by defendant Cook were “untrue” or false, and thus has failed to set forth the necessary factual allegations to support a defamation claim.
5. As to the references in the Caption to “assault and battery” and to “excessive force” within the complaint (at ¶54), defendants move to strike such references and/or to dismiss any claim for excessive force and/or assault and battery, as the plaintiff has failed to allege any facts which, if true, would constitute a cause of action against the defendants for either claim.
6. As to defendant Beau Martin, the entire First Amended Complaint, which fails to state facts sufficient to constitute any cause of action against him.

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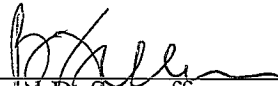
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1 This motion will be based upon this Notice of Motion, the supporting Memorandum of Points and
2 Authorities filed herewith, Request for Judicial Notice, and on such other and further matters as the Court
3 deems proper.

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5 DATED: February 29, 2008

6 SENNEFF FREEMAN & BLUESTONE, LLP

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8 By: 
Michael D. Senneff
Bonnie A. Freeman
9 Attorneys for Defendants County of Sonoma,
10 Stephan Passalacqua, J. Michael Mullins, Greg
11 Jacobs, Christine M. Cook, Russel L. Davidson,
12 James Patrick Casey, and Detective Beau M.
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